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Keeping First Nations Informed

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Message from the Director

The recent Consultation Listening meeting held in February in Arlington, Virginia included a discussion on whether the Internal Revenue Service uses “cookies” to track access to www.irs.gov, the web site we use to provide all customers with ready access to federal tax information. While we reassured the attendees that there is no tracking of access and even posted a link at the bottom of the ITG landing page, the discussion made me realize that we should clearly articulate our overall concern for the privacy of Tribal tax information.

The Internal Revenue Code contains significant limitations on the accessibility of tax information. Quite simply, tax information is protected as some of the most confidential data that the federal government maintains. The IRS is prohibited from sharing information with very narrowly defined exceptions. Those exceptions generally cover court ordered releases, limited information sharing with other taxation agencies, and releases of information to Congress under federal statutes that require such information to be provided in order to enhance tax compliance.

The statutes impose severe penalties on any IRS official who releases information to a third party, whether orally or in writing, beyond those situations where it is a legal requirement, or necessitated to obtain necessary information for tax administration requirements. Such a situation might include

sharing information with IRS Counsel where necessary to obtain legal advice on a Tribal issue.

Independent of the legal requirements that protect your tax information, I want to state my firm commitment to protecting the privacy of any conversations that you may have with me or my staff. For example, those who have attended the Consultation Listening meetings held to date are aware that we do not collect names of attendees unless they wish to provide them. Where Tribes have requested one-on-one meetings to discuss individual matters, we have scheduled them in a private area and have maintained those conversations as confidential.

We will continue to respect the requirements of federal law as well as respect your rights as a sovereign entity. Your information and our discussions will not be shared with anyone except those with a "need to know."

As always, I am available to discuss any concerns you may have by calling me at (202) 283-9736.

Christie Jacobs

Federal Tax Calendar for Second Quarter 2006

April 2006

- | | |
|---------------------|--|
| Wednesday, April 5 | - * make a deposit for 3/29-3/31 |
| Friday, April 7 | - * make a deposit for 4/1-4/4 |
| Monday, April 10 | - employees report March tip income to employers if \$20 or more |
| Wednesday, April 12 | - * make a deposit for 4/5-4/7 |
| Friday, April 14 | - * make a deposit for 4/8-4/11 |
| Monday, April 17 | - **make a deposit for March if under the monthly Deposit Rule |
| Wednesday, April 19 | - *make a deposit for 4/12-4/14 |
| Friday, April 21 | - *make a deposit for 4/15-4/18 |

May 2006

- | | |
|-------------------|--|
| Wednesday, May 3 | - *make a deposit for 4/26-4/28 |
| Friday, May 5 | - *make a deposit for 4/29-5/2 |
| Wednesday, May 10 | - *make a deposit for 5/3-5/5 |
| | - employees report April tip income to employers if \$20 or more |
| Friday, May 12 | - *make a deposit for 5/6-5/9 |

- | | |
|-------------------|---|
| Monday, May 15 | -**make a deposit for April if under the monthly deposit rule |
| Wednesday, May 17 | - *make a deposit for 5/10-5/12 |
| Friday, May 19 | - *make a deposit for 5/13-5/16 |
| Wednesday, May 24 | - *make a deposit for 5/17-5/19 |
| Friday, May 26 | - *make a deposit for 5/20-5/23 |

June 2006

- | | |
|--------------------|--|
| Thursday, June 1 | - *make a deposit for 5/24-5/26 |
| Friday, June 2 | - *make a deposit for 5/27-5/30 |
| Wednesday, June 7 | - *make a deposit for 5/31-6/2 |
| Friday, June 9 | - *make a deposit for 6/3-6/6 |
| Monday, June 12 | - employees report May tip income to employers if \$20 or more |
| Wednesday, June 14 | - *make a deposit for 6/7-6/9 |
| Thursday, June 15 | - **make a deposit for May if under the monthly deposit rule |
| Friday, June 16 | - *make a deposit for 6/10-6/13 |
| Wednesday, June 21 | - *make a deposit for 6/14-6/16 |
| Friday, June 23 | - *make a deposit for 6/17-6/20 |
| Wednesday, June 28 | - *make a deposit for 6/21-6/23 |
| Friday, June 30 | - *make a deposit for 6/24-6/27 |

* Make a payroll deposit if you are under the semi-weekly deposit rule.

* * Make a monthly deposit if you qualify under that rule.

NOTE: Deposits made through EFTPS must be initiated at least one day prior to the due dates listed above in order to be timely.

Return Filing Dates

May 1st

- File Form 730 and pay the tax on applicable wagers accepted during March.
- File Form 941 for the 1st quarter of 2006. If all deposits paid on time and in full, file by May 10th.

May 31st

- File Form 730 and pay the tax on applicable wagers accepted during April.

June 30th

- File Form 730 and pay the tax on applicable wagers accepted during May.

New Rules Outlined for ITIN Acceptance Agents

The Internal Revenue Service has announced new rules for individuals who participate in the Individual Taxpayer Identification Number (ITIN) Acceptance Agent program.

An Acceptance Agent is an individual, business or organization (college, financial institution, accounting firm, etc.) authorized by IRS to assist individuals in obtaining ITINs. Acceptance Agents review applicants' documentation, complete a certificate of accuracy, and forward the certificate and application to the IRS for processing.

The ITIN is for taxpayers who do not qualify for a Social Security Number but who still need the nine-digit identification number used by the IRS to process a Form 1040 and other tax schedules.

Revenue Procedure 2006-10 outlines the new rules and instructions for Acceptance Agents. The four major changes are:

- Acceptance Agent applicants are required to submit to suitability checks.
- Existing Acceptance Agent agreements will expire on December 31, 2006. Acceptance Agents must reapply to retain their approved status.
- Acceptance Agent agreements must be renewed every fourth year.
- Acceptance Agents may request their names be added to a publicly available list that will be published by the IRS.

These changes are part of an on-going IRS effort to ensure that ITINs are used strictly for tax administration purposes. In recent years, the IRS has made a number of revisions to the ITIN program such as requiring the ITIN application be accompanied by a completed tax form and streamlining the number of identification documents that Acceptance Agents can use to confirm the ITIN applicant's identity.

Form 13551, Application to Participate in the IRS Acceptance Agent Program, is available for printing or downloading from the IRS web site at www.irs.gov.

Publication 4268—Employment Tax Guide for Tribes

Our on-line Employment Tax Guide continues to receive a very positive response from tribal payroll and finance employees. You can download this comprehensive guide from a link on our landing page at www.irs.gov/tribes.

Common Compliance Problems Identified through Compliance Checks

Compliance Checks remain a valuable tool to assess the areas where tribes may have federal tax responsibilities and help to mitigate potential problems. Our January 2006 issue introduced the Tribal Evaluation of Filing and Accuracy Compliance (TEFAC) which was designed to allow qualifying tribes to conduct their own self Compliance Check. Information on the entire Compliance Check process, as well as useful references on common tribal tax issues, can be accessed on our web landing page by clicking on "Enhancing Federal Tax Compliance."

The following list shows the "Top 10" items that are surfacing via Compliance Checks and may be useful to you in assessing your own situation. If you believe you may have any of the issues outlined below, you may wish to apply to conduct a self Compliance Check through our TEFAC program. The process is also outlined on our web site at www.irs.gov/tribes.

"The Top 10"

1. FUTA – tribes still making tax deposits and/or filing Forms 940 when they are not required to pay FUTA because they participate in State unemployment.
2. Noncompliance with Revenue Ruling 59-354 - Tribal council members' pay being handled incorrectly and reported on a Form 1099 instead of a Form W-2 or being reported on a Form W-2 with FICA, Medicare and income tax withheld.
3. Form 1099 problems:
 - the forms were not prepared at all,
 - the forms were prepared incorrectly (amounts in the wrong box, etc.),
 - the forms were prepared but not submitted to IRS,
 - the incorrect copy was submitted to IRS,
 - not aware of the exception to filing on payments to corporations,
 - not aware of requirement to file 1099 for medical and legal expenses, even if the recipient is incorporated.
4. Employment tax return filing/deposit problems
 - tax returns filed but no tax deposits were made,
 - deposits were made but no return was filed,
 - deposits were made to incorrect period,
 - deposits were made using the wrong timetable (e.g. monthly deposits when should be semiweekly),
 - unaware of the "next day" deposit rule,
 - Form 941 was filed with no Schedule B attached.
5. Forms W-9 and W-4 are not being used or are not being updated when necessary.
6. Unaware of requirement to backup withhold if no TIN provided prior to

payment.

7. Payments to tribal members (committee members, gaming and non-gaming per capita) not reported on information returns, reported on the wrong information return, required withholding not done, or withholding done incorrectly.
8. Amounts on Forms W-2, W-3, and 941 don't reconcile.
9. Incorrect filing requirements for the entity, or there are other tribal entities that were not identified to the IRS as belonging to the tribe.
10. Unaware of magnetic media filing requirement, and unaware of FIRE system (Filing Information Returns Electronically).

Previous editions of the newsletter may be found at www.irs.gov/tribes.

To add your name or e-mail address to our mailing list, please contact us via e-mail at Carol.A.Czolowski@irs.gov, or call Carol Czolowski at (801) 620-5048.

This will be my last newsletter as Editor; my replacement will be Melodie Gren, ITG Specialist from Spokane. I have enjoyed working on the newsletter and receiving feedback from many of you. I plan to retire later this year and move back to my home in Upstate New York. Please afford Melodie the same courtesies you have shown me. Thank you.

TEST YOUR KNOWLEDGE

Question: If a tribal member is not a U.S. resident, is backup withholding applicable on per capita distributions?

Answer: Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding, and Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons, would be applicable. If the tribal member has not furnished a TIN upon request by the payor, backup withholding at a rate of 30% is applicable.

Question: For contestants competing in powwows, is prize money paid to these individuals taxable? If so, how is this reported?

Answer: Prize money won by contestants at a powwow is considered taxable income to the contestant. Prizes of \$600 or more are to be reported on Form 1099-MISC, Miscellaneous Income, in block 3 as "other income". Request that a Form W-9, Request for Taxpayer Identification Number (TIN) and Certification, be completed by the contest winner in order to fill out the Form 1099-MISC properly.

Question: Are all employee benefits taxable?

Answer: No. The Internal Revenue Code specifically exempts certain fringe benefits for all employers. To be excluded, the conditions and requirements of the applicable Internal Revenue code section must be met.

Employee achievement awards (Treasury Regulation §1.74), group-term life insurance (Treasury Regulation §1.79-0), accident and health plans (Treasury Regulation §1.105-5), qualified scholarships (Treasury Regulation §1.117-1), meals or lodging (Treasury Regulation §1.119-1), cafeteria plans (Treasury Regulation §1.125-2T), and other legislated fringe benefits are subject to certain conditions and requirements discussed at length in the regulations. In addition, Internal Revenue Code § 132 provides for exclusions from gross income for fringe benefits which qualify as no-additional-cost services, qualified employee discounts, working condition fringes, qualified transportation fringes, or qualified moving expense reimbursement. Generally, no-additional-cost services are only available to employees with respect to property or services that are offered for sale to customers in the ordinary course of the same line of business in which the employee performs substantial services. There is a detailed discussion of working condition fringes at Treasury Regulation § 1.132-5.

Question: Is an employee's reimbursement for business travel ever taxable?

Answer: Depending upon the type of plan the employer has, the reimbursement for business travel may or may not be taxable. There are two types of plans:

Accountable Plans - An accountable plan is not taxable to your employee. Amounts paid under an accountable plan are not wages and are not subject to income tax withholding and payment of Social Security, Medicare, and Federal Unemployment (FUTA) Taxes.

Non-accountable Plans - A non-accountable plan is taxable to your employees and is subject to all employment taxes and withholding.

Accountable Plans - (Nontaxable to your employee) In order to qualify as an accountable plan, your reimbursement or allowance arrangement must require that your employees meet all three of the following rules:

There must be a business connection to the expenditure. This means that the expense must be a deductible business expense incurred in connection with services performed as an employee. If not reimbursed by the employer, the expense would be deductible by the employee on his/her 1040 Income tax return.

There must be "adequate" accounting by the recipient within a reasonable period of time. This means that your employees must verify the date, time, place, amount and the business purpose of the expenses. Receipts are required unless the reimbursement is made under a per diem plan. Excess reimbursements or

advances must be returned within a reasonable period of time. Reasonable depends upon facts and circumstances.

Amounts paid under an accountable plan are not wages and are not subject to income tax withholding and payment of social security, Medicare, and Federal Unemployment (FUTA) taxes.

Non-accountable Plans - (taxable to your employees and are subject to all employment taxes and withholding) Your payments would be considered treated as paid under a non-accountable plan if:

Your employee is not required to or does not substantiate timely those expenses to you with Receipts or other documentation.

You advance an amount to your employee for business expenses and your employee is not required to and does not return timely any amount he or she does not use for business expenses.

If the expenses covered by this arrangement are not substantiated or amounts in excess of expenses are not returned within a reasonable period of time, the amount is treated as paid under a non-accountable plan. This amount is then subject to income tax withholding and payment of social security, Medicare, and FUTA taxes for the first payroll period following the end of the reasonable period.

For more detailed information please refer to Publication 15, Circular E, Employer's Tax Guide, Publication 1542, Per Diem Rates, Internal Revenue Code § 62(c), and Treasury Regulation 1.62 and 1.274.

Reporting Abuses/Schemes

We continue to work with tribes and tribal officials to address financial abuses and schemes being promoted in Indian country. Working together can help ensure the integrity of tribal finances, and eliminate the threats posed by individuals with schemes that appear "too good to be true" and often are.

If you are aware of financial impropriety or of a promoter advocating a scheme that appears highly suspect, you can contact the ITG Abuse Detection and Prevention Team at (716) 686-4860 or via e-mail at tege.itg.schemes@irs.gov.

Cellular Phones and Pagers

Tribal governments have to consider a number of issues that arise with respect to cellular phones and pagers used by Tribal Council Members and employees. This matter is complicated by the fact that the cell phones and pagers are used both for business and personal purposes.

Employers often provide employees with cell phones and pagers for use outside of the employer's premises in the performance of their duties. Cell phones and pagers (and other items listed in IRC §280F) are considered "listed property." Because the nature of the property lends itself to personal use, strict substantiation requirements are in place. Employees are required to account for business and personal use.

Listed Property:

- Business use is excludable from the wages of the employee as a working condition fringe benefit.
- Personal use is included in the wages of the employee.
- If substantiation requirements are not met, all use is included in the wages of the employee.

Substantiation Requirements

Records of business and personal use must be kept by the employee in order to determine whether the value of any of the use is included in the employee's wages.

Example: An employer provides an employee with a cell phone and pays the monthly charges. The employer requires the employee to highlight personal calls on the monthly bill. The employer includes the direct charges for personal use and a pro rata share of monthly fees and services in the wages of the employee. The business use is not taxable to the employee. The personal use is included in the wages of the employee.

Generally, if the working condition fringe benefit exclusion is not met, the personal use of an employer-provided cellular phone/pager is considered wages and subject to the withholding of federal employment taxes. Social security and/or Medicare withholding depends on the applicable coverage for the employee.

Cell Phone Examples

A. The tribal government provides an employee a cellular phone for business purposes. The tribe's written policy prohibits personal use of the phone. The tribe routinely audits the employee's phone billings to confirm that personal calls were

not made. No personal calls were actually made by the employee. The business use of the phone is not taxable to the employee.

B. The tribal government provides an employee a cellular phone for business purposes. The tribe's written policy states that the phone is not intended for personal use and requires reimbursement from the employee for any personal calls. The tribe routinely audits the employee's phone billings to ascertain personal calls made. The employee reimburses the tribe for all personal calls made. The business use of the phone is not taxable to the employee.

C. The tribal government provides an employee a cellular phone for business purposes. The tribe's written policy prohibits personal use of the phone. The tribe does not, however, audit the employee's phone billings to confirm only business use. The Fair Market Value (FMV) of the phone (one time value) plus the monthly phone service charge (ongoing) are taxable, reportable income to the employee.

D. The tribal government gives an employee an electronic pager for business purposes plus pays the monthly service charge for its employee. The tribe does not audit pager billing records. The FMV of the pager (one time value) plus the monthly pager service charge (ongoing) are taxable, reportable income to the employee.

E. The tribal government provides an employee with a cellular phone and pays the monthly charges. The tribe requires the employee to highlight personal calls on the monthly bill. The tribe includes the direct charges for personal use and a pro rata share of monthly fees in the wages of the employee. The business use portion of the phone is not taxable to the employee.

F. The tribal government allows an employee to use a personally owned cellular phone for tribal business. The tribe has established a written policy on the use and manner of reimbursement for such phones. The employee submits a signed copy of the employee's cellular bill highlighting work-related calls for which the employee is requesting reimbursement. The tribe reimburses the identified work calls on a pro rata share of the monthly fees after auditing the bill. The reimbursement of business related calls is not taxable to the employee.

G. The tribal government allows an employee to use a personally owned cellular phone for tribal business. The tribe has established a written policy on the use and manner of reimbursement for such phones. The tribe pays a flat rate monthly allowance to the employee for the use of the phone. The tribe does not require documentation identifying the personal and business use of the phone. The entire amount of the monthly allowance is taxable, reportable income to the employee.

Forms 941, W-2 and W-3 Reconciliation

- Annual amounts from payroll records should match the total amounts reported on all Forms 941 for the year.
- Total amounts reported on all Forms 941 for the year should match the sum of the same data fields shown in the W-3 totals.
- If these amounts do not match, recheck records and identify necessary adjustments.